



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Airports Division

Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007

MAY 17 2004

Mr. Peter Drinkwater
Director, County Airports
Airport Administration Building
1960 Joe Crosson Drive
El Cajon, CA 92020-1236

RECEIVED

MAY 19 2004

GILLESPIE FIELD

Dear Mr. Drinkwater:

We are responding to your letter dated January 12, 2004, which represents San Diego County's (county) response to our compliance advisory letter dated November 14, 2003. While we thank you for your reply and are encouraged by your proposals to improve governing Gillespie Field, we would like to provide you with feedback and added guidance on the compliance issues we have identified. However, before addressing these compliance issues again, let me first share with you our view of the federal role and interest in the San Diego County Airport System.

We view our responsibility as one of stewardship to ensure the long-term preservation, development, and use of the county airport system as part of the national airport system. As an airport director, you know the value of the county airport system that enables county residents and the flying public to gain access to the national airport system. The federal government has deeded surplus federal lands totaling over 600 acres, in trust, to the county for this purpose and has invested nearly \$28 million of Airport Improvement Program (AIP) funds in the county airport system since 1982.

We remain ready to work with the county in formulating a corrective action plan. The attachment to this letter is longer than originally intended, but we wanted to identify all outstanding issues in one document and provide a clear and comprehensive list of the Federal Aviation Administration's concerns.

We would be pleased to meet with you to discuss these issues further. Please call Anthony Garcia, Airports Compliance Specialist, at (310) 725-3606, if you wish to discuss this letter, have any questions, or would like to arrange a meeting.

Sincerely,

Mark A. McClardy
Manager, Airports Division

Attachment A

Gillespie Field Compliance Advisory Follow-Up

Cajon Plaza

San Diego County's (county) plan to develop the 70-acre Cajon Plaza parcel [a.k.a. Parcel 5 or Brucker leasehold (see Figure 1)] entirely for aeronautical use responds to the long-term federal interest in Gillespie Field (SEE).¹ Thus, we request that the county complete and adopt, as expeditiously as possible, the Airport Layout Plan (ALP)/Narrative Report and forward it to the Federal Aviation Administration (FAA) for approval.

Based on previous discussions between the FAA and the county, we anticipate that the new ALP will clearly show the proposed aeronautical development of this 70-acre parcel and that the county will not allow any new, non-aeronautical uses within this parcel. For the record, we request that you confirm the state court decision that the lease between the county and the Brucker family expires in 2005, as well as the expiration date(s) of any other non-aeronautical leases within Parcel 5.

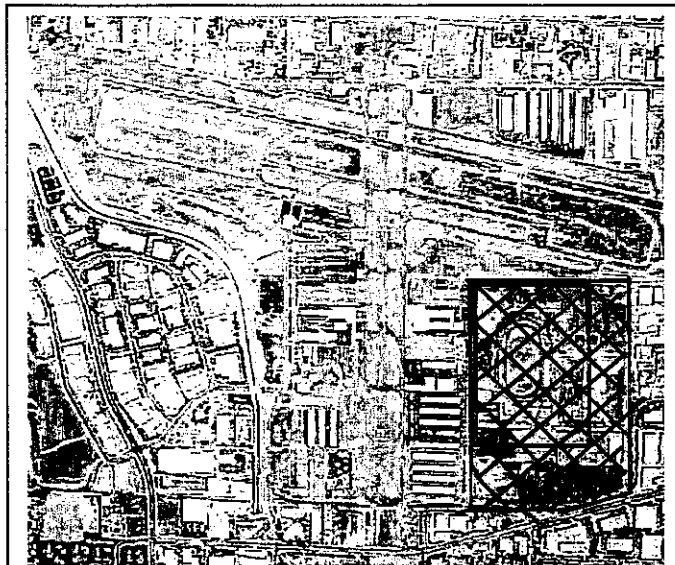


Figure 1 – Aerial view of SEE. The 70-acre Cajon Plaza with the El Cajon speedway is visible in the lower right of the photograph.

Photo: FAA

¹ Gillespie Field was commissioned by the USMC in 1942 and used until 1944. In 1946, the county of San Diego leased the airport and converted it to a public airport. On June 1, 1953, the county was granted ownership of the facility (612 acres) by the federal government through a surplus property conveyance under P.L. 80-289, approved July 30, 1947, and amended Section 13 of the Surplus Property Act of 1944. Surplus property instruments of transfer were, and are, issued by the War Assets Administration (WAA) and its successor, the General Services Administration (GSA). However, Public Law (P.L.) 81-311 specifically imposes upon FAA the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is or has been conveyed to non-federal public agencies pursuant to the Surplus Property Act of 1944.

Non-aeronautical Leasing Activities in Aeronautical Facilities

The county's federal obligations, imposed by the original Quitclaim Deed that conveyed the airport to the county and the county's obligations under the Airport Improvement Program (AIP) grant assurances, require the county to secure the consent of the FAA for any proposed non-aeronautical airport property uses. The FAA has an interest in ensuring that any lease, property transfer, easement or use will not adversely affect the development, improvement, operation, or maintenance of the airport. We have identified several non-aeronautical activities at SEE that the county has permitted without FAA review or consent.

We support the county's goal of removing non-aeronautical uses not authorized by the county and deemed unacceptable by the FAA. However, there still exist noncompliant uses under the county's federal obligations. Moreover, the county is not receiving the full fair market value (FMV)² rents from some of its master tenants at the airport.

The county's plan to update its Rules and Regulations, Minimum Standards, and Policies and Procedures for the county airport system is a good start for developing objective criteria for good airport governance with respect to commercial activities. However, objective standards do not by themselves provide the necessary corrective actions to address the existing noncompliant uses at SEE and elsewhere in the airport system.

An example is the county's lease with La Jolla Investment Company, Inc. (La Jolla), Exhibit G,³ *Permitted Uses of the Premises*. The lease states in Section (e) of Exhibit G that the county may "at the county's sole option and discretion allow nonaviation uses on the premises" [airport leaseholds]. The AIP grant assurances require FAA concurrence in advance if aeronautical property displayed on the ALP is to be used for a non-aeronautical purpose. We request that Section (e) of the county's Exhibit G lease form be corrected to state that advanced written concurrence by the FAA will be required for all proposed non-aeronautical use of airport property.

It appears that some SEE master tenants favor non-aeronautical subtenants in lieu of aeronautical subtenants. We define a master tenant as having a direct lease with the county, usually a ground lease for a hangar or other aeronautical facility, and a subtenant as having a direct sublease with the master tenant in the master tenant's facility. Some of these master tenants, with or without county approval, are subleasing aeronautical properties to non-aeronautical subtenants conducting non-aeronautical activities. In so doing, they are displacing potential aeronautical subtenants. An example is the use of an aircraft hangar to store limousines used by a local taxi/limousine company (See Figure 2).

Master tenants are regularly granted favorable lease terms because current airport rates are dictated by an airport rate agreement that established rental rates below FMV. While an aeronautical lease that recovers the airport's costs could be below FMV rent, the use of the

² Market value is defined as the most probable price which a property should bring in a competitive and open market under all conditions requisite of a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimuli. See Complete Appraisal Summary Report, prepared by Alan M. Wilson & Associates, for county of San Diego, dated August 18, 2000, p. 2.

³ First Amendment to Aviation Lease between San Diego County and La Jolla Investment Co., Inc, Exhibit "G," *Permitted Uses of the Premises*, dated September 13, 2000.

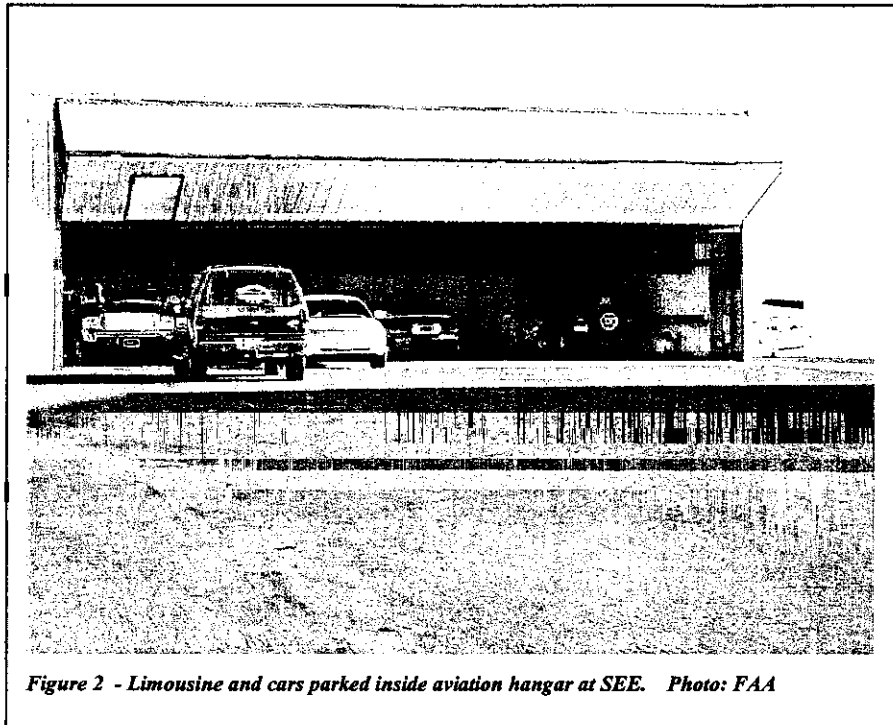


Figure 2 - Limousine and cars parked inside aviation hangar at SEE. Photo: FAA

property for non-aeronautical purposes triggers the requirement that rent to the airport will be at FMV.

FAA policy requires the county to make airport land available to aeronautical users. The FAA may approve non-aeronautical uses on a temporary basis when it can be shown that airport facilities are not needed for aeronautical purposes. It is our opinion that this condition does not exist at SEE. Based on the county's own assessment, "Gillespie Field has a very limited amount of vacant land available for future development and there is virtually no existing supply of vacant hangar space..."⁴

With more than 750 based aircraft and over 200,000 annual operations,⁵ it is not surprising that there are no vacant hangars at SEE, one of the largest and most important reliever airports in Southern California. On January 20, 2004, the Gillespie Development Council reported that at SEE "a number of calls have been received from people asking where they can get tie-downs..." After a survey of available areas at SEE, it was determined that "five tie-downs and one hangar were available at Gillespie Field..." As a result, the county will "probably be making short-term agreements until additional tie-downs or hangar spaces become available on leaseholds due to future developments. Airports will be coordinating transient ramp use in the interim."⁶

Aircraft storage waiting lists are lengthy, and some Fixed Based Operators (FBO) have not had hangars available for several years.⁷ An alternate development site plan, for Parcels 98-0127A and B (the current La Jolla leasehold), was considered for the building of a large number of

⁴ Complete Appraisal Summary Report, prepared by Alan M. Wilson & Associates for county of San Diego, dated August 18, 2000, p. 17.

⁵ FAA Form 5010 for SEE

⁶ Gillespie Field Development Council meeting minutes, January 20, 2004.

<http://www.co.san-diego.ca.us/dpw/airports/pdf/JANUARY04MINUTES.pdf>

⁷ Letter from Karl Keating to Ms. Woodie Woodward, FAA Associate Administrator for Airports, dated August 7, 2000.

T-hangars (80+).⁸ It is clear that the use of aviation hangars, to support the operation of limousine and car businesses (See Figure 2) and the use of hangars for office space, are not within the meaning of aeronautical use under the county's federal obligations.

Finally, the official county airport General Plan and Restrictions, as provided to us in August 2000, expressly prohibits non-aeronautical activities in T-hangars.⁹ Yet the county has permitted several non-aeronautical uses, not only in T-hangars, but also in other types of larger hangars and facilities. We are not sure of the reason for this discrepancy between the General Plan and Restrictions and the county's leasing practices.

The county's leasing practices must expressly prohibit all non-aeronautical uses in aeronautical facilities, unless the county receives FAA concurrence with the non-aeronautical use in advance. If a non-aeronautical use is found acceptable to the FAA, the county must ensure that master tenants, subleasing aeronautical facilities to non-aeronautical subtenants, are paying FMV rent to the county for their aeronautical facility. That is, master tenants paying below fair market rent must have the rent paid to the county increased to FMV. We request that all of the unauthorized non-aeronautical uses of aeronautical properties at SEE be terminated within 12 months. Non-aeronautical enterprises, such as the limousine operator and the component manufacturer, have numerous off-airport options to pursue their businesses, in lieu of occupying aeronautical facilities on the airport. However, aeronautical users have no such options.

Residential Hangars

In response to the FAA's objection to on-airport residential facilities, the county stated that it "never approved residential hangars." However, the county lease agreement with La Jolla states that residential single-family dwellings are allowed at the airport.¹⁰

Airport management agreed to the adoption of Article 2(e) of the La Jolla lease, entitled "Residential Use." The county-approved language in the lease specifically added that a "single family dwelling" to be occupied by a "caretaker or superintendent of such use and his family may be permitted upon approval of the Airport Director."¹¹

In our compliance advisory letter dated November 14, 2003, we objected to both the physical presence of residential facilities at county airports and to the standard airport lease provision that grants airport tenants the right to have residential dwellings for themselves and their families.

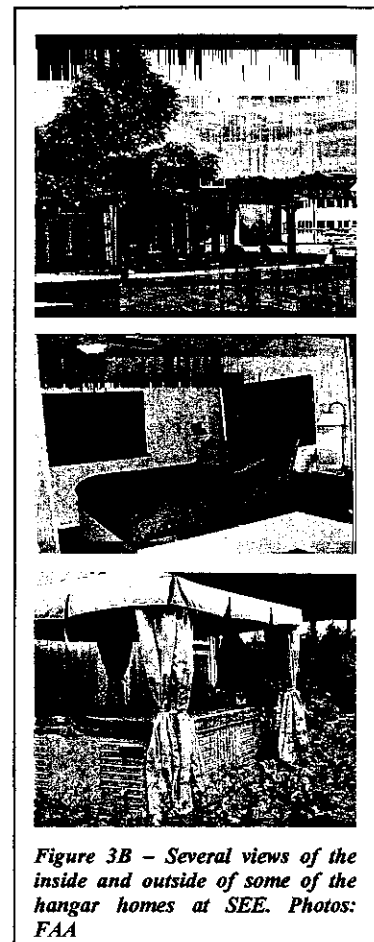
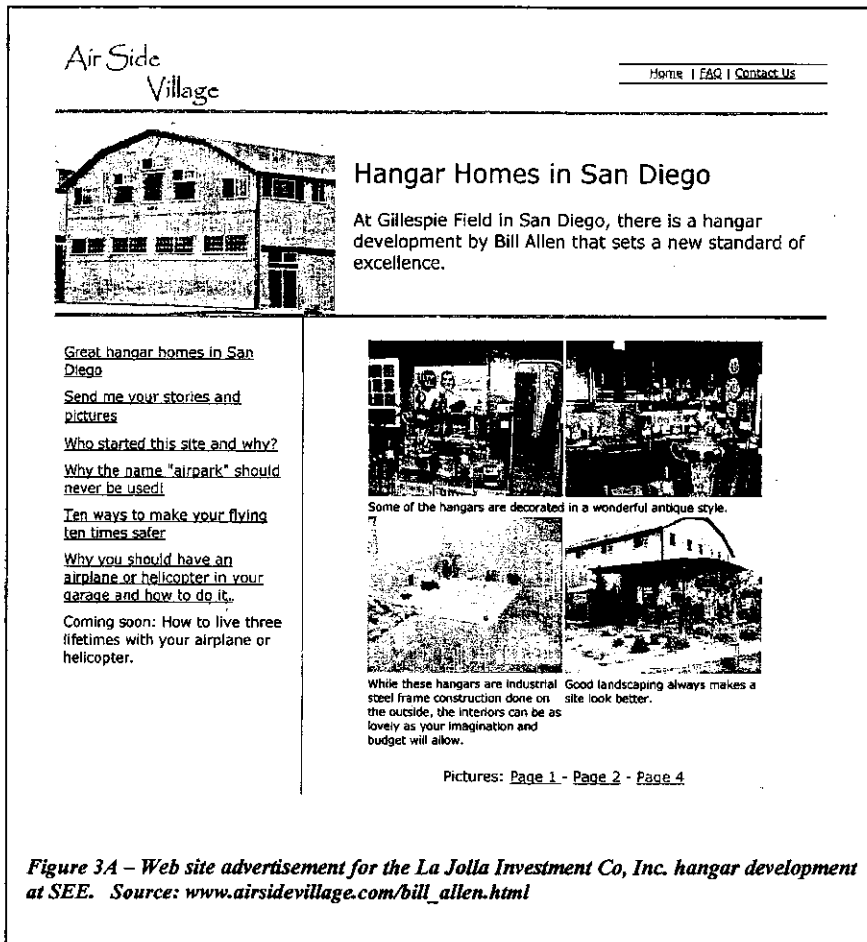
Your letter refers to these residential dwellings in some cases as "caretaker units" and at other times as "crew quarters," but varying attempts to narrowly define the purpose of these dwellings places no real limitation on how such dwellings are actually used. The true residential nature of SEE hangars is explicitly depicted for public examination at an online web site (Figures 3A and 3B).

⁸ Alternate Site Plan "T-Hangars" for parcel 98-0127A and 98-0127B and Site Plan Comparisons.

⁹ Complete Appraisal Summary Report, prepared by Alan M. Wilson & Associates for county of San Diego, dated August 18, 2000, p. 21.

¹⁰ Section 2.e of Exhibit C, *Gillespie Field Aviation Areas Development Standards*, attached to the lease between the county and La Jolla Investment Company.

¹¹ Article 2(e) "Residential Use," Exhibit C of "Gillespie Field Aviation Areas Development Standards" of lease between county of San Diego and La Jolla Investment Company, Inc.



The compliance implications of residential units and non-aeronautical activities were described to you in our earlier compliance advisory letter. However, this is not the first time that we have expressed our concerns on this issue to the county. In a letter to the FAA dated February 9, 2001, the Director of county Airports responded to FAA concerns about residential facilities, stating that the county's airport lease agreements only authorize a single-family dwelling on a leasehold site, and only with the approval of the Airports Director. He further stated that crew quarters were permissible within certain limits.¹²

On February 28, 2001, the ATC Manager at Gillespie Field notified the county of his objection to the hangar construction west of the tower and south of taxiway "D."¹³ On April 5, 2001, the FAA communicated in writing its objection to residential hangars at SEE. We expressly stated that "any residential portion of a combined residential and aircraft storage building on Gillespie Field, a federally obligated airport, does not meet the criteria as an aeronautical activity and is considered an incompatible land use."¹⁴ The FAA also requested the county to stop approving the construction of residential dwellings on the airport.

¹² Letter from Rick Jenkins, Director County Airports, San Diego County, to John P. Milligan, Supervisor, Standards Section, FAA Western-Pacific Airports Division, dated February 9, 2001.

¹³ Letter from Kevin S. Karpe, Air Traffic Manager, Gillespie Field ATC, to Ms. Noreen Crane, Airport Manager, Gillespie Field, dated February 28, 2001.

¹⁴ Letter from John P. Milligan, Supervisor, Standards Section, FAA Western-Pacific Airports Division, to Mr. Rick Jenkins, Director County Airports, dated April 5, 2001.

The county has the power to control airport development at SEE. Residential facilities exist at SEE because the county approved them. The county can and must exert its proprietary powers and control airport development in the long-term interest of civil aviation and in compliance with the FAA grant assurances and surplus property obligations.

Be advised that the FAA will presently be addressing the relevant provisions of the La Jolla lease agreement with La Jolla officials and their counsel. In the meantime, we request that no additional residential development be approved on the La Jolla leasehold until the discussions with La Jolla are concluded. The FAA will provide notice to the county after it concludes its discussions with La Jolla, along with additional compliance guidance.

In your letter of January 12, 2004, you state that other development proposals similar to La Jolla's may be submitted to the county for consideration. If that is the case, we request that the county not approve any project or enter into any lease at SEE or in any other of its federally-obligated airports, including Ramona and Fallbrook, that would include residential dwelling units. We expect the county to take action in all cases to prevent residential dwelling units from being established on airport property, including those leases currently under negotiation or for which construction has not been completed.

Grant Assurance 24 *Fee and Rental Structure*

The county's letter of January 12, 2004 indicated that the FAA never objected to the county's rental-rate agreement that established a long-term, fixed rate structure at SEE. We point out that the FAA never rendered a determination regarding the county's rate setting methodology. Ordinarily, the FAA will not question the fairness of rates and charges established by the sponsor unless a complaint has been made alleging fees are unreasonable. At the time of the subject meeting, there was no fee dispute. However, the FAA did apprise the county of the need to make the airport as self-sustaining as possible because the rental rates, which were set by agreement, are well below FMV. Therefore, over time, the airport will not be as self-sustaining as it could have been with FMV rates.

We again request that the county endeavor to adopt a rate-setting methodology that is both reasonable and able to make the airport as self-sustaining as possible with the passage of time. This is consistent with the policy of the Board of Supervisors that the county airports receive fair market value when leasing airport land.¹⁵ We request that the county closely adhere to its own Airports Leasing Practices to correct this problem. Moreover, we also request that the county follow its own Airports Leasing Practices with regard to lease extensions and prohibit developers or county master tenants from selling artificially undervalued ground leases beyond the initial lease term.

Pursuant to Assurances 24 and 25 (*Airport Revenues*), the county must charge FMV rents for non-aeronautical uses of airport land and facilities. In effect, that means whenever a non-aeronautical use is justified and approved by the FAA, the county must charge, and the master tenant must pay, a FMV market rate. The county may not grant the master tenant a below-FMV ground rent while allowing the master tenant to sublease to non-aeronautical subtenants.

¹⁵ "SAN DIEGO COUNTY AIRPORTS LEASING PRACTICES, Fair Market Rental."

We request that we receive the new county Airports Rules and Regulations, Minimum Standards, Rates and Charges and Policies and Procedures by July 30, 2004.

Grant Assurance 25 Airport Revenue

The Redevelopment Agency of the county of San Diego entered into an agreement during 1998 and 1999 with the city of El Cajon for the "Marshall Avenue" project. During fiscal year (FY) 1999-2000, the County Airport Enterprise Fund (AEF) expended \$825,000 for this non-aeronautical project.¹⁶ Pursuant to the December 1987 Resolution 11, approved by the County Board of Supervisors, all funds loaned by the AEF to the Redevelopment Agency must be repaid, including interest accrued on the average quarterly outstanding balance equal to the average earned investment rate.¹⁷ In April 2001, the county stated to the FAA that this loan would be repaid to the AEF.¹⁸

We anticipate receiving the report from your financial consultant, who we expect will be able to provide us with specific information regarding the Marshall Avenue project which, at a minimum, will include the loan amount, amounts paid to date, interest rate applied to the loan, and amortization schedule for completing payments on the loan. We request this report no later than July 30, 2004. Also, we request that you provide evidence that the initial \$225,000 payment amount for this loan was deposited into the AEF in FY 2004.

The county's newest commercial/industrial park at SEE is Cuyamaca West, a two-phase non-aeronautical industrial/business development. Phase I was approved in 1988 and the developer's groundbreaking took place in 1991. The project consists of 11 lots totaling more than 14 acres. The tenants are diverse, with businesses that include corporate offices, companies engaged in research and development, light manufacturing, and office processing operations. As stated in the notes to the Component Unit Financial Statements for the County Redevelopment Agency, the County AEF funded the initial expenditure of approximately \$3.7 million for Gillespie Field's Cuyamaca West and Marshall Avenue Project. In June 2001, additional funding of \$5.9 million from the AEF was recorded.

As of June 30, 2003, the Redevelopment Agency was required to reimburse the AEF approximately \$9.6 million for these two projects. This reimbursement was discussed at the May 20, 2003, meeting of the Gillespie Field Development Council.¹⁹ Interest of approximately \$3.9 million has accrued on these loans as of June 30, 2003. It is our understanding that a bond issue will reimburse the AEF for the amount due. We assume this was completed or will soon be completed as these loans of AEF revenue are carried as a current asset on the airport statement of net assets dated June 30, 2003.²⁰ We request that you confirm the date when this reimbursement will be complete.

In addition, ground lease revenues derived from master tenants at the Gillespie Field Industrial Park and the Cuyamaca West Business Park are airport revenues. The FAA's 1967 release from the deed restriction, allowing the use of airport property for industrial park purposes, obligated

¹⁶ Redevelopment Agency of the county of San Diego, Component Unit Financial Statements, June 30, 2003, p. 20.

¹⁷ San Diego County Resolution 11, December 1, 1987.

¹⁸ Letter from Chandra Wallar, Assistant Director, San Diego County Department of Public Works, to John P. Milligan, Supervisor, Standards Section, FAA Western-Pacific Airports Division, April 30, 2001.

¹⁹ Gillespie Field Development Council, minutes of May 20, 2003 meeting.

²⁰ Redevelopment Agency of the county of San Diego, Component Unit Financial Statements, June 30, 2003, p. 20.

the county to apply the lease proceeds toward the improvement, operation, or maintenance of the county airport or airport system. The dedication of airport revenue to aeronautical uses was also required under a county resolution. As airport revenue, the funds received by the county from the industrial parks must be accounted for in accordance with Grant Assurance 25, *Airport Revenues*.

We request that you provide evidence that the revenue from the Gillespie Field Industrial Park and Cuyamaca West Business Park are being deposited in the AEF. Suitable evidence would be the chart of accounts and trial balance statements for these two parks for the last six fiscal years and a written confirmation from the county that all revenues due to the county have been deposited in the AEF and none have been diverted for alternative nonairport use.

Finally, we request that you affirm that the county will follow its own Airports Leasing Practices and avoid below-FMV rentals with its master tenants in all future leases, including the Cajon Parcel and the parcels that are west of Marshall Avenue.

Grant Assurance 29 Airport Layout Plan

In FY 1997, the county was given a \$135,000 AIP grant to prepare a Master Plan for SEE. By early 2001, the county had decided to substitute the master plan work to an ALP Update and Narrative Report. As of May 2003, a consultant hired by the county was working on the final drawing for the ALP/Narrative Report.²¹ In July 2003, the county's consultant notified the FAA that the Draft Final ALP/Narrative Report would be submitted by September 2003.²²

You indicated in your letter that the final ALP/Narrative Report is to be presented to the County Board of Supervisors for approval in the second quarter of 2004. Therefore, we request the county work closely with FAA staff to fully develop and finalize the ALP/Narrative Report as quickly as possible following approval by the County Board of Supervisors.

Airport Traffic Control Tower Line-of-Sight and Part 77²³ Surface Penetration

A review of the facts indicates that the county has not taken acceptable action to protect the terminal airspace at SEE. In February 1999, the FAA completed an airspace study²⁴ based on a September 1998 Form 7460-1 notice of the construction of two-story hangars close to taxiway "D." In its determination, the FAA stated that it did not object to the proposed construction, provided the construction did not impair the line-of-sight or any clear view from the Airport Traffic Control (ATC) Tower to taxiway "D" or any other movement areas.²⁵ During construction, the Airport Traffic Control Tower Manager noted that some of the hangars did prevent direct observation of certain portions of taxiway "D" (see Figure 4). The county relied on the hangar developer for mitigation, but nothing was ever done.²⁶

²¹ Gillespie Field Development Council, minutes of May 20, 2003 meeting.

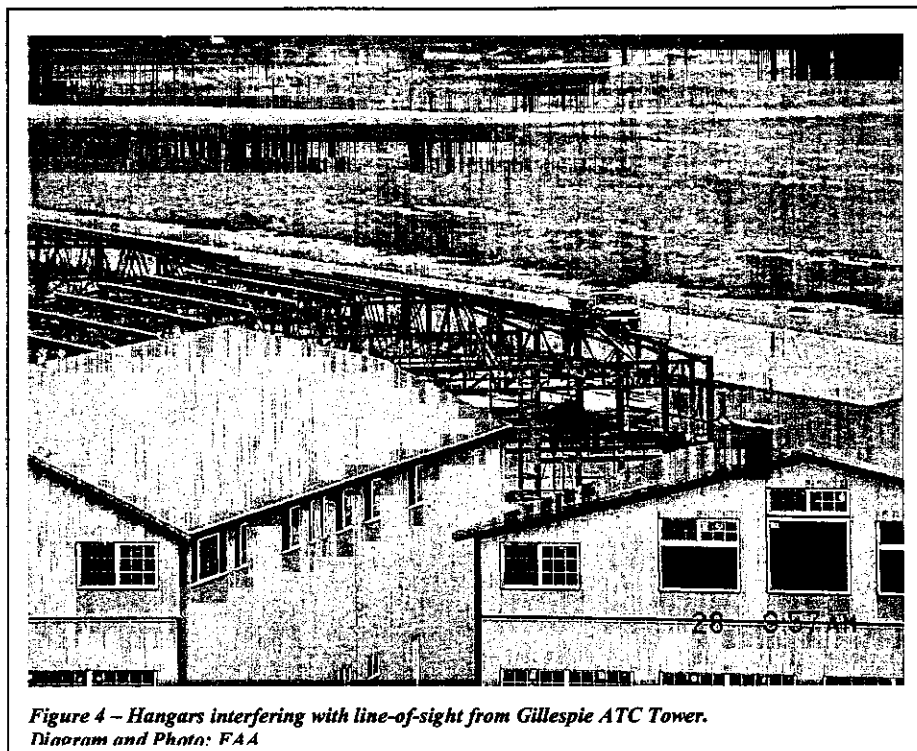
²² Facsimile from P&D Aviation to Ms. Margie Drilling, FAA Western-Pacific Airports Division, dated July 23, 2003.

²³ 14 CFR Part 77 "Objects Affecting Navigable Airspace" establishes standards for determining obstructions in navigable airspace, sets forth requirements for notice of proposed construction or alteration and provides for aeronautical studies of obstructions to air navigation.

²⁴ Airspace Study No. 98-AWP-151-NRA.

²⁵ Letter from Mr. Michael R. Agaibi, Supervisor, Planning Section, FAA Western-Pacific Airports Division, to Ms. Noreen Crane, Airport Manager, Gillespie Field, dated February 22, 1999.

²⁶ Letter from Mr. Rick Jenkins, Airports Director, Gillespie Field, to Mr. John J. Sitar, Jr., dated April 12, 2001.



As a result, part of taxiway “D” is today a nonmovement area because of the loss of visibility from the ATC tower. The county was given advance notice of a potential obstruction problem and a second notice that the hangars were in fact an obstruction. However, the county did not take action to enforce the line-of-sight condition in the February 1999 Airspace Study or require the hangar developer to modify the hangar, or otherwise eliminate the obstruction. In May 2001, the FAA again asked the county to take immediate action to correct the line-of-sight problem to ensure a “high degree of safety of operation is maintained” at SEE.²⁷

In 2002, another airspace-related problem arose when the same master tenant built additional two-story hangars. This construction resulted in a penetration of Terminal Instrument Procedures (TERPS) surfaces, which eliminated the Instrument Flight Rules (IFR) capability of Runway 27L, which in turn reduced the utility and IFR capability of the airport.

In its leasing practices, the county requires master tenants developing facilities to comply with the notice requirements covered in Federal Aviation Regulations Part 77 prior to any alteration or construction on the Airport.²⁸ The language in the county leases with La Jolla state that if this condition is breached, the county reserves the right to enter upon the land leased and to remove the offending structure, all of which would be at the expense of the master tenant.

²⁷ Letter from Michael R. Agaibi, Supervisor, Planning Section, FAA Western-Pacific Airports Division, to Ms. Noreen Crane, Airport Manager, Gillespie Field, dated May 10, 2001. Other than unsuccessful proposals by the county and hangar developer to install a video surveillance camera instead of direct line-of-sight from the ATC Tower, or to install Plexiglas on building roofs to improve visibility, no corrective action has been taken to date on this issue. See letters from Mr. Rick Jenkins, Airports Director, Gillespie Field, to Mr. John Clancy, AWP-500, dated April 12, 2001, and August 28, 2001.

²⁸ Exhibit B, FAA Requirements, paragraphs I and M, to Aviation lease between the county and La Jolla Investment Co., Inc., September 13, 2000.

Grant Assurance 20 requires that the county take appropriate action to protect instrument and visual standards (including established minimum flight altitudes) by removing, lowering, relocating, marking, lighting, or otherwise mitigating existing airport hazards, and by preventing the establishment or creation of future airport hazards. In spite of the lease provision and the grant assurance obligation, the county has not taken any action to correct or eliminate the offending structures.

On November 10, 2003, the FAA requested survey data for the hangar #12, #13, #22, and #26 corners adjacent to taxiway "D." These data are needed to facilitate a Flight Procedure Office re-evaluation of the terminal instrument procedures criteria to determine whether the IFR departure minimums for Runway 27L can be restored. We have yet to receive these critical data.

Again, we request to know the date that the county will provide the data to FAA Airports Division and FAA Flight Procedures Office in order to reassess whether or not the IFR capability to Runway 27L can be restored.

In addition, we request that you review the current proposed hangar developments at McClellan-Palomar, Ramona, and Fallbrook Airports to ensure that the FAA's investment in aeronautical infrastructure is not jeopardized by airspace penetrations inconsistent with Part 77. If this is the case, the county has an opportunity to remedy the situation before construction takes place.

Runway Safety Action Plan (RSAP)

The Vehicle or Pedestrian Deviation²⁹ (V/PD) record for Gillespie is a safety concern for the FAA. The year 2003 saw an increase in V/PDs. FAA Form 8020-24/-25 case files, dating from January 19, 2000 through October 11, 2003, show seven pedestrian and two vehicle deviations involving Taxiway "A," located on the west side of Runway 17/35, and Taxiway "B" on the east side of the same runway.

More recently, three V/PDs were recorded in the first 10 days of February 2004. On February 4, a pedestrian was reported on Runway 27L by a landing aircraft. On February 9, two pedestrians crossed Taxiway B at Runway 17/35 without authorization, while another pedestrian crossed Runway 17/35 via Taxiway A-2 and B-2. We request the county take immediate action to curtail such incidents.

Grant Assurance 19 requires, in part, that the county ensure that the airport and all related aeronautical facilities are operated at all times in a safe and serviceable condition. This includes V/PDs. We request that the county limit access in the movement and safety areas to only those pedestrians and ground vehicles necessary for airport operations and to establish and implement procedures for the safe and orderly access to, and operation in, movement and safety areas by pedestrians and ground vehicles.

When the ATC tower is in operation, we expect the county to ensure that each pedestrian and ground vehicle in movement areas or safety areas, are controlled either (1) by two-way radio communications between each pedestrian or vehicle and the tower or by an escort with two-way radio communications with the tower or (2) by such measures authorized by the FAA for

²⁹ A Vehicle/Pedestrian Deviation (V/PD) by definition is a vehicle or pedestrian incursion resulting from a vehicle operator, non-pilot operator of an aircraft, or pedestrian (including bicycles) entering the movement area without ATCT authorization.

controlling pedestrians and vehicles, namely, signs, signals, or guards, when it is not operationally practical to have two-way radio communications between the tower and the pedestrian, vehicle, or escort.

When an ATC tower is not in operation, the county should provide adequate procedures to control pedestrians and ground vehicles in movement areas or safety areas through two-way radio communications or prearranged signs or signals, and ensure that each airport employee, tenant, or contractor is adequately trained in the procedures for operating in the movement and safety areas, before being given county authorization to traverse any and all aircraft movement areas. The FAA intends to follow up with airport sponsors having a record of recurrent deviations to more effectively reduce such occurrences.

Consequences of Continued Noncompliance

We urge the county to fully address all of the compliance issues identified in this letter. Failure to do so could result in the FAA initiating a formal investigation in accordance with FAA Rules of Practice for Federally Assisted Airport Proceedings, 14 C.F.R. Part 16, Subpart D.

Furthermore, failure to comply with the grant assurances and the obligations outlined in the 1953 Surplus Property Conveyance, and in the subsequent 1967 Land Release, could result in the FAA taking enforcement action against the county. FAA enforcement action may include the enforcement of the Surplus Property covenants and withholding approval of any application by the county for AIP grants authorized under Title 49 USC § 47114(d), 47115 or 47116.

In addition, sanctions associated with revenue diversion could impact not only SEE but all other airports owned and operated by the county. Sanctions could include the withholding of future AIP grants, withholding payments or modification of existing AIP grants, withholding of new Passenger Facility Charges (PFCs) to McClellan-Palomar Airport, withholding of all transportation funds under USC Title 49 (not just aviation funding), and the assessment of civil penalties. In addition, the FAA may pursue specific enforcement of grant conditions by order of a Federal Court.

Summary

The following list summarizes the corrective actions and the associated responses that the FAA will expect from San Diego County:

Cajon Plaza

1. The county will complete the Airport Layout Plan Narrative Report as expeditiously as possible and consult regularly with the Western-Pacific (AWP) Airports Division as it does so. (Page 3, Para. 1)
2. The county will notify AWP of the official expiration date(s) of lease(s) on the Cajon Plaza parcel as soon as possible. (Page 3, Para. 2)

Non-Aeronautical Leasing Activities in Aeronautical Facilities

3. The county will revise and provide AWP with a copy of the updated Section (e) of Exhibit G to the county lease form that contains language stating that advance written concurrence by the FAA is required for non-aeronautical uses of airport property. (Page 4, Para. 4)
4. The county will confirm that unauthorized and unnecessary non-aeronautical uses of airport facilities are being terminated and will end within 12 months. (Page 6, Para. 3)

Residential Hangars

5. The county will not approve construction of new hangars containing residential dwelling units on the La Jolla Investment Company leasehold. (Page 8, Para. 2)
6. The county will not permit any additional residential development at any San Diego County airport. The county will take action to prevent residential dwelling units from being established on airport property, including those which are currently being negotiated. (Page 8, Para. 3)

Grant Assurance 24 *Fee and Rental Structure*

7. The county will adhere to its Airport Leasing Practices and apply a rates and charges methodology to make the airport as self-sustaining as possible by adjusting aeronautical rates to more accurately reflect economic and market conditions at its airports. (Page 8, Para. 5)
8. The county will provide AWP with the new County Airport Rules and Regulations, Minimum Standards, Rates and Charges, and revised Policy and Procedures by July 30, 2004. (Page 9, Para. 1)

Grant Assurance 25 *Airport Revenue*

9. The county will provide AWP with a report from its financial consultant by July 1, 2004, detailing the Marshall Avenue project loan information, which shall include the loan amount, amounts paid to date, the interest rate on the loan, and the amortization schedule for completing payments in full. (Page 9, Para.3)
10. The county will provide evidence that the \$225,000 loan payment was deposited in the Airport Enterprise Fund (AEF). (Page 9, Para. 3)
11. The county will confirm the dates that the AEF will be reimbursed in full for loans made available to the County Redevelopment Agency to pay for capital improvements in the industrial and business park. (Page 9, Para. 5)
12. The county will provide evidence for the past six fiscal years to demonstrate that revenue from the industrial and business park is being regularly deposited in the Airport Enterprise Fund and only used for permitted airport purposes. The county will include a written certification attesting that it is the county's practice to regularly deposit these revenues in the AEF. (Page 10, Para. 2)

13. The county will provide evidence to confirm that the county will follow its own Airport Leasing Practices and avoid below-FMV rental rates in all future leases. (Page 10, Para. 3)

Grant Assurance 29 Airport Layout Plan

14. The county and its consultant will work with FAA staff to complete the Draft Final ALP/Narrative Report as quickly as possible. (Page 10, Para. 5)

Airport Traffic Control Tower Line-of-Sight and Part 77 Surface Penetration

15. The county will provide the date when the county will transmit survey data to the FAA Flight Procedures Office regarding hangars 12, 13, 22, and 26. (Page 12, Para. 3)
16. The county will ensure that hangar projects at McClellan-Palomar, Ramona, Borrego Valley, and Fallbrook Community Airpark are in compliance with Part 77 requirements before any construction begins. (Page 12, Para. 4)

Runway Safety Action Plan (RSAP)

17. The county will take action to curtail and eliminate Vehicle and Pedestrian Deviations at its airports and will inform AWP and the Runway Safety Program of its remedial action plan. (Page 12, Para. 6 and 7)

Concluding Guidance

Assurance 5, *Preserving Rights and Powers*, implements the provisions of 49 USC 47107, *et seq.*, and requires, in pertinent part, that the sponsor of a federally obligated airport "...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary [FAA], and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor."

In addition to obligating the airport sponsor to preserve its rights and powers to carry out all grant agreement requirements, this assurance also places certain obligations on the sponsor regarding the land upon which FAA-administered federal funds have been spent, including the operation and maintenance of the airport and the oversight of tenants and public users making use of the airport.

In exchange for federal aid, the county has assumed certain obligations and has agreed to operate its airports safely, efficiently, and in the public interest. Therefore, it is not unreasonable for the FAA to expect and, if necessary, direct airport sponsors to comply with the grant assurances. We expect that San Diego County will take this non-compliance disclosure seriously and make every effort to conform to all federal airport requirements. We look forward to your cooperation and your willingness to implement all necessary corrective measures to fulfill the county's federal obligations.